

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH E. GUADAGNOLI,

Plaintiff,

vs.

Civ. No. 15-214 MCA/SCY

**SOCIAL SECURITY ADMINISTRATION,
CAROLYN W. COLVIN, ACTING COMMISSIONER
OF SSA,**

Defendant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

THIS MATTER is before me on Plaintiff's motion to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915. *Doc. 2*. "[T]o succeed on a motion to proceed IFP, the movant must show a financial inability to pay the required filing fees. . ." *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005). In determining whether a movant is unable to pay within the meaning of § 1915, the Tenth Circuit has told district courts that "[o]ne need not be absolutely destitute to proceed IFP." *Lewis v. Ctr. Mkt.*, 378 F. App'x 780, 785 (10th Cir. 2010) (unpublished). Nevertheless, a motion to proceed IFP may properly be denied if the movant can pay the required fees and still support and provide necessitates for himself and any dependents. *Id.* Keeping these standards in mind, the Court has carefully reviewed Plaintiff's financial affidavit and determined that Plaintiff possesses sufficient resources to pay the \$400 dollar filing fee.

According to Plaintiff's affidavit he receives \$1750 in income each month and has approximately \$1529 in expenses, for a surplus of \$221. *Doc. 2* at 2-3. While this surplus is not sufficient alone to cover the filing fee, Plaintiff indicates that he owns a three bedroom house

worth \$130,000, in which he has equity of at least \$90,000.¹ He also owns a vehicle, free and clear, that is valued at \$8,000. Finally, he has \$400 dollars in his bank account. *Id.* at 2. Even if this money is earmarked for other expenses, by borrowing a small loan against his home or saving money for two months, Plaintiff should be able to pay the filing fee. In other words, taken as a whole, Plaintiff has sufficient resources to pay the requiring filing. As a result, it is my recommendation that the Court deny Plaintiff's IFP motion.


STEVEN C. YARBROUGH
United States Magistrate Judge

THE PLAINTIFF IS FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition he may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.

¹ Plaintiff writes that he has an outstanding mortgage on the property of \$33,000 or perhaps \$37,000 – the writing is unclear.